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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Estate of DONALD M.
BEACH, Deceased.

B285862

(Los Angeles County
Super. Ct. No. BP143125)

ELIZABETH HAVERT et al.,

Petitioners and
Appellants,

v.

BRUCE BEACH,

Objector and
Respondent.

APPEAL from judgment of the Superior Court of Los
Angeles County, Mary Thornton House, Judge (Ret.).
Reversed in part, with directions.

Sullivan Law, Shaunna Sullivan, for Petitioners and Appellants.

Lurie, Zepeda, Schmalz, Hogan & Martin, Steven L. Hogan and Lawrence J. Imel; Law Offices of David C. Hinshaw and David C. Hinshaw, for Objector and Respondent.

Petitioners and appellants Ann Marie Beach Tabb and Elizabeth Havert (also known as Elizabeth Ann Beach) appeal from a judgment on the pleadings in favor of respondent Bruce Beach, in his capacity as executor of the estate of Donald M. Beach, in this probate proceeding.¹ Bruce contends that Tabb's appeal from orders denying discovery motions is untimely. In the interests of justice, we deem Tabb's premature appeal to have been filed immediately following the order discharging the executor. However, even assuming the orders were reviewable on appeal from an order discharging the executor, Tabb does not have standing to compel discovery or participate in the probate proceedings.

Havert filed a petition in the probate court for determination of an entitlement to estate distribution. She alleged that no trust existed when the decedent executed his estate plan, and as a result, the gift to the trust failed and

¹ Because more than one individual in this matter shares the last name Beach, we will refer to them by their first names for ease of reference.

should be distributed to her through intestate succession. The probate court found the existence of the trust was conclusively determined in a prior appeal from a will contest and was the law of the case. On appeal, Havert contends that no determination has been made as to whether the decedent executed a valid trust on November 15, 2010. We agree. The judgment on the pleadings must be reversed.

FACTS AND PROCEDURAL HISTORY²

Estate Plan

Donald Beach had four siblings: Beverly, Bruce, Robert and Douglas. Havert is Donald's daughter from his first marriage and his only child. Robert had four children, including Tabb and her sister Elizabeth Humiston. Donald and his second wife began divorce proceedings in 2009. On

² On the court's own motion, pursuant to Evidence Code sections 459, subdivision (a), and section 452, subdivision (d), we take judicial notice of the appellate court record in *Humiston v. Beach* (Sept. 18, 2015, B260366 [nonpub. opn.] (*Humiston*)). On June 6, 2018, Bruce filed a motion requesting that this court take judicial notice of pleadings, exhibits, reporter's transcripts, and the unpublished opinion in *Humiston*. We do not need to take judicial notice of documents in both the appellate file and Bruce's request for judicial notice, and therefore, Bruce's motion is denied. (*ABF Capital Corp. v. Grove Properties Co.* (2005) 126 Cal.App.4th 204, 211, fn.1.)

January 13, 2010, Donald visited estate planning attorney Michael Berger and revoked his existing trust.

A holographic will was executed on May 1, 2010, providing \$2 million and real property to Beverly, and \$1 million and real property to Donald's new caregiver. The remainder of the estate was to be distributed: 50 percent to Bruce, 25 percent to Robert, and 25 percent to the children of Robert, Bruce and Beverly. Bruce and Beverly were named as co-executors.

Donald's caregiver was fired in October 2010. Donald visited attorney Michael Lanning to prepare a new estate plan. On November 15, 2010, Donald executed a typewritten will prepared by Lanning that revoked all former wills. The November 15, 2010 will expressly disinherited Havert as follows: "I declare that I am presently unmarried. I have one (1) child now living, namely ELIZABETH ANN BEACH. I hereby direct that ELIZABETH ANN BEACH receive no distribution from this Will or otherwise from my estate."

The will gave Donald's personal property to Beverly and Bruce. The remainder of Donald's property poured over to a trust as follows: "I give, devise and bequeath to the Trustee of the DONALD M. BEACH DECLARATION OF TRUST DATED NOVEMBER 15, 2010, all the rest, residue and remainder of my property, real, personal or mixed, of whatsoever character, and wheresoever situated, including all lapsed legacies and devises of any property over which I have the power of appointment at the time of my death (herein called my 'residuary estate') and including all

contents of any safety deposit box or boxes held solely in my name, to be held, administered and distributed under the provisions of that Trust Agreement and any amendments made to it prior to my death. (It is my intention to identify the Trust established by me and not to create a separate Trust by the Will, nor to subject the property which constitutes the rest of said Trust to the jurisdiction of a Probate Court.) If for any reason the disposition hereinabove directed in this Paragraph FOURTH is not operative or is not valid, or if the transfer by this Will to that Trust previously established by myself cannot become effective for any reason, or if the Trust referred to above fails or has been revoked, then I give, bequeath and devise all the remainder of my estate to the Trustee named in this Trust so established for the purposes and uses and under the same conditions as set forth in the above-referenced Trust provisions, and in such event, and only in such event, said Trust provisions are hereby referred to and incorporated for the purpose of creating a testamentary trust on the terms set forth therein.” Bruce was appointed executor of the will.

Lanning notarized seven documents related to Donald’s estate plan on November 15, 2010, but entered them as one line item in his notary book instead of recording a separate signature for each item notarized.

Judgment of dissolution of Donald’s marriage was entered on February 14, 2011. On September 7, 2011, Donald executed a complete restatement of the November 15, 2010 trust. The restated trust appoints Bruce as

successor trustee. After Donald's death, the trust assets were to be distributed as follows: stock and interest in Strawberry Patch, Inc. to Bruce; certain real property to Beverly; \$1 million to Douglas; \$1 million to Robert; and the remainder distributed equally between Bruce and Beverly. The trust expressly stated, "It is Trustor's intent that ELIZABETH ANN BEACH receive no distribution from this Trust or otherwise from Trustor's estate."

Donald died on May 22, 2012. An amendment to the restated trust was prepared, which would have divided the gift to Robert and distributed \$500,000 to Tabb and \$500,000 to Robert instead, but Donald died before viewing or signing the amendment.

Will Contest and Appeal

On June 21, 2012, Bruce filed a petition to probate the November 15, 2010 will. Bruce served notice of the petition on Havert. On August 2, 2012, Bruce filed a petition seeking an order to transfer all estate assets outside of the restated trust to the restated trust. He requested dismissal of the probate petition without prejudice. The probate court granted Bruce's petition on December 4, 2012.

Robert died in November 2012. His wife was appointed as the personal representative of his estate. Robert's will provided for a testamentary trust and named his wife as trustee. Following his wife's death, the remainder of the trust would be distributed to his children. In the event that

his wife could not serve as trustee, Tabb and another sibling would be appointed as successor trustees.

On July 11, 2013, Tabb filed a petition seeking to admit the holographic will to probate. Notice of the petition was provided to Havert. On July 29, 2013, Bruce re-filed his petition to probate the November 15, 2010 will. Bruce served notice of his petition on Havert.

On August 26, 2013, Tabb objected to Bruce's petition, alleging the November 15, 2010 will was a product of undue influence and Donald had lacked capacity to execute it. Tabb's sister Humiston filed a complaint in intervention and joined in Tabb's objections to Bruce's petition.

In October 2013, Tabb served a subpoena on attorney Lanning that sought several estate planning documents, including the November 15, 2010 trust document. Bruce moved to quash the subpoena on several grounds, including that the documents were covered by attorney-client privilege, were protected from disclosure by the right to financial privacy, and were not directly relevant to the probate petition. Bruce argued that the validity of Donald's trusts were not at issue. He was not required to produce trust instruments, he asserted, because the petitions concerned Donald's capacity to make a will. He offered that Tabb could ask Lanning about the beneficiaries of the November 15, 2010 trust at Lanning's deposition. Tabb opposed the motion to quash on the ground that Donald's capacity to execute the lost will and the trust on November 15, 2010, was at issue. She could not evaluate whether the

trust's disposition of assets varied from Donald's intentions, or whether a beneficiary unduly profited from the trust, without production of the trust. In reply, Bruce noted that no challenge had been filed to the November 15, 2010 trust or the restated trust. The sole purpose of the probate proceedings was to determine which of two wills was operative. The probate court ordered production of any documents related to the creation or revocation of Donald's wills, and related to claims of undue influence and lack of capacity, but the court expressly excluded from disclosure the November 15, 2010 trust document, all documents related to the November 15, 2010 trust, and all documents related to Donald's assets.

Tabb served a trial subpoena on attorney Lanning which requested that he bring documents to trial pertaining to Donald's assets and trusts, including the November 15, 2010 trust. Bruce moved to quash the trial subpoena on the ground that it violated the prior order. Bruce's motion to quash was granted.

The probate petitions were consolidated for trial, which commenced on June 9, 2014. Attorney Lanning testified that he met with Donald for two and a half hours on November 15, 2010. Donald's mental state was as clear as ever, so Lanning did not think it was necessary to video record the execution of Donald's estate planning documents. Bruce waited in the reception area during the meeting. Lanning did not discuss Donald's estate plan with Bruce or Beverly. Donald knew exactly how he wanted to dispose of

his assets. Lanning completed all of the testamentary documents on November 15, 2010, and Donald executed them that day. All of the testamentary instruments were left with Lanning at his office.

One of the documents introduced at trial was entitled “Exhibit A to the Donald M. Beach Declaration of Trust Dated November 15, 2010,” which Donald signed on November 15, 2010. The document stated, “The undersigned, DONALD M. BEACH, hereby declares that all assets are held as Trustee of the DONALD M. BEACH DECLARATION OF TRUST DATED November 15, 2010 (the Trust)[. ¶] DONALD M. BEACH as trustor of said Trust hereby transfers, grants, and assigns all right, title, and interest including, but not limited to, the following assets, owned by DONALD M. BEACH on the date of execution of this document, or at any time hereafter, to DONALD M. BEACH as Trustee of the Trust.” The documents listed several assets, including parcels of real property, insurance proceeds, stocks and securities, and business interests, including Strawberry Patch, Inc. The document was witnessed by attorney Lanning.

Donald also executed several trust transfer deeds on November 15, 2010, in his capacity as trustee of the revoked trust, granting interests in several parcels of real property to himself as trustee of the November 15, 2010 trust. The will, Exhibit A to the November 15, 2010 trust, and the transfer deeds were admitted as exhibits at trial.

On July 28, 2014, the probate court issued its final statement of decision. The court found Lanning's testimony was credible. Donald had testamentary capacity to execute the November 15, 2010 will. Based on Lanning's testimony, Donald had sufficient mental capacity to understand the nature of the testamentary act, recollect the nature and situation of his property, and understand his relationship to his living descendants. The court also relied on the testimony of medical professionals. The court ruled that there was no undue influence in the production of the November 15, 2010 will. The disposition of property was consistent with Donald's stated intentions during his lifetime. There was no evidence that Beverly participated in the execution of the November 15, 2010 will. Tabb and Humiston failed to establish that the result of the will was inequitable. Having found the November 15, 2010 will was validly executed and not the result of undue influence, issues related to the holographic will were moot.

On September 9, 2014, the probate court entered its order admitting the November 15, 2010 will to probate and appointing Bruce as executor. The order denied Tabb's petition without prejudice.

Tabb filed a motion seeking a new trial on the ground that the November 15, 2010 will and trust were so inextricably intertwined as to constitute Donald's entire estate plan, and there was insufficient evidence to conclude that she and Humiston were not beneficiaries of the November 15, 2010 trust, because it had never been

produced. Bruce responded that production of the November 15, 2010 trust would violate Donald's financial privacy right. He asserted that Tabb and Humiston were not beneficiaries of the November 15, 2010 trust. On November 5, 2014, the probate court denied the motion for a new trial.

Tabb and her sister filed an appeal from the judgment after trial. One of the issues raised on appeal was whether the trial court should have ordered discovery of the November 15, 2010 trust document, because the information reasonably could have led to the discovery of admissible evidence, and the trust document was necessary to show possible undue influence over the decedent by Beverly. Bruce responded that the November 15, 2010 trust was personal financial information that was protected under California's constitutional privacy right.

This appellate court concluded that it did not need to determine whether the probate court abused its discretion by refusing to compel disclosure or production of the November 15, 2010 trust. Any error in refusing to compel production was not prejudicial, because Tabb and her sister were able to argue in closing argument that Beverly's share of the estate increased substantially under the restated trust, which they characterized as an inequitable result that was inconsistent with the decedent's prior estate plans. The probate court's finding that the decedent was not unduly influenced by Beverly was supported by substantial evidence, such as Lanning's testimony that the November 15, 2010 will and trust were completed without input from anyone other than

the decedent. The appellate court noted that “[t]he original November 15, 2010 trust was not before the probate court nor is it in the record” (*Humiston, supra*, B260366, at p. 5), but nevertheless found it was not reasonably probable that the probate court would have reached a more favorable result for Tabb and Humiston if the November 15, 2010 trust had been produced.

Administration of the Estate

The probate court ordered Bruce to file a final accounting by a certain date and set an order to show cause for March 4, 2016. On March 1, 2016, Tabb filed a brief in support of the court’s order to show cause to compel an accounting of all assets held outside the November 15, 2010 trust. She alleged that several assets had not been transferred to the trust, and their value exceeded the threshold required to probate the assets. The matter was continued to June 3, 2016.

On May 11, 2016, Tabb filed a petition for an order compelling Bruce to provide an accounting. Tabb noted that there had been no adjudication that a trust declaration dated November 15, 2010 existed, was signed by Donald, or that Donald had capacity to sign it. She filed the petition “as a person interested in the Estate and Trust of Donald M. Beach,” on the ground that she had a property right or claim against the estate which might be affected by the proceeding.

That same day, Tabb filed a petition for issuance of a citation requiring Bruce to show cause for contempt and be removed as executor. She requested a citation directed to Bruce that would require him to appear with the November 15, 2010 declaration of trust and show cause why he should not be punished for contempt of the probate court's order. In her brief in support of the petition, she stated that Bruce had paid a sum to the executor of her father Robert's estate, but had not rendered an accounting for the expenses and taxes deducted from the bequest. Tabb sought to have Bruce cited to provide proof that a trust declaration existed and was duly executed. She argued that she was not barred by the doctrine of res judicata, because the claims were not identical to the issues litigated in the will contest. Bruce filed a response.

On May 26, 2016, Bruce filed an acceptance of the trust, along with a report, waiver of account and acknowledgement of satisfaction of interest, and a petition for discharge of the executor. Bruce explained that the estate had been administered under Probate Code section 13100, because the total value of the estate assets was less than \$150,000. The beneficiaries of the will had waived a formal account and acknowledged their interests in the estate had been satisfied. He requested an order discharging the requirement of a formal account and discharging him from his fiduciary duties as executor of the estate.

After a hearing on June 3, 2016, the probate court confirmed that Bruce must file a final account, ordered Tabb to file any objections to the final account, and continued the order to show cause until December 9, 2016.

In June 2016, Tabb served a deposition notice on Bruce and a request for production of documents. On July 14, 2016, Bruce filed a motion to quash the deposition notice, or for a protective order, and sanctions. Bruce argued that Tabb was not an “interested person” pursuant to Probate code section 48 and had no standing to conduct discovery related to the financial affairs of the estate. Discovery was closed, and Tabb had not obtained an order to reopen discovery. He argued that principles of res judicata, collateral estoppel, and law of the case prevented Tabb from conducting discovery into issues that were decided at trial or which could have been raised at trial. The probate court had previously denied Tabb’s requests for production of the November 15, 2010 trust and she was precluded from raising the issues again. Bruce also filed responses and objections to the document production request.

On August 9, 2016, Tabb filed a motion to compel further responses to her demand for the production of documents and requested sanctions. Bruce filed an opposition.

On October 7, 2016, the probate court entered an order quashing the deposition notice and awarding monetary sanctions of \$5,630 against Tabb. Tabb was not a

beneficiary under the trust, nor was she an “interested person” under Probate Code section 48.

Havert’s Petition and the Order Discharging the Executor

On November 9, 2016, Havert filed a petition for determination of an entitlement to estate distribution, which she subsequently amended. The petition sought to: 1) determine the existence of a trust declaration dated November 15, 2010, under Probate Code section 17200, subdivisions (a), (b)(1), (b)(3), and (b)(4); 2) compel the trustee to provide a copy of the terms of the November 15, 2010 trust under Probate code section 17200, subdivision (b)(7)(A), and provide an accounting of probate assets that were not transferred to the November 15, 2010 trust before the decedent’s death under Probate Code section 17200, subdivision (b)(7)(B) and (C); and 3) for a determination of estate distribution if there was no valid trust in existence on November 15, 2010, under Probate Code section 11700. The petition alleged the November 15, 2010 trust document was not in existence when the decedent executed his will. As a result, the gift of the residuary estate to the trust failed and passed through intestate succession to the decedent’s heirs, including Havert.

Tabb filed a statement of interest in the estate on November 9, 2016, and joined in Havert’s petition. Havert also filed a statement of interest in the estate. Tabb filed a motion for reconsideration of the order quashing her

deposition notice. Bruce opposed the motion for reconsideration and requested sanctions.

On December 9, 2016, the probate court found the waiver of account was on file. The hearing on the order to show cause was taken off calendar and the citees were discharged.

On January 5, 2017, Havert filed objections to Bruce's petition for discharge. Bruce filed objections to Havert's petition for determination of an entitlement to the estate. He also filed a supplement to his report, waiver of account, acknowledgment of satisfaction of interest and petition for discharge.

On March 13, 2017, the probate court entered an order denying Tabb's petition for issuance of a citation requiring Bruce to show cause for contempt and to be removed as executor. The probate court also entered an order denying Tabb's motion to compel further responses to her demand for production of documents and ordered monetary sanctions of \$5,160 against Tabb, her attorney Shaunna Sullivan and Sullivan's law firm.

On March 22, 2017, Bruce filed a motion for judgment on the pleadings to dismiss Havert's amended petition. Bruce argued that Havert's petition was barred by the statute of limitations, because she had notice of the will contest proceedings. He also argued that she had no interest in the estate.

On April 27, 2017, Havert opposed the motion for judgment on the pleadings. Havert asserted that she was

not contesting the provisions of the will. She was seeking a determination, as part of the timely administration of the probate estate, that the residue of the estate passed by intestacy if no valid trust instrument had been executed on or before November 15, 2010. She had standing as an heir entitled to take property by intestate succession.

On June 30, 2017, the probate court signed an order granting judgment on the pleadings. The court found the order after the trial in the will contest determined that the decedent had capacity to execute the November 2010 will, admitted the will to probate, and found the validity of the holographic will was moot. The probate court took judicial notice of the findings in the July 28, 2014 statement of decision and stated, “In light of [the] finding that what attorney Michael Lanning testified to was truthful, the existence of the November 15, 2010 will and trust in addition to the validity of the September 7, 2011 restatement has already been determined. No trial court would have jurisdiction to change that determination.” The court noted the appellate court had stated, “It is not reasonably probable that the probate court, *even if it had considered the November 15, 2010 Trust*, would have reached a more favorable result.” The probate court found Havert was not an interested person, because she was not entitled to a distribution. The motion was granted without leave to amend. The court ordered Bruce to prepare the judgment.

On July 7, 2017, the probate court granted a waiver of account and discharged the executor. The court ordered

Bruce's attorney to prepare an order and provide notice of the court's ruling.

On July 10, 2017, Bruce provided notice of the probate court's ruling granting judgment on the pleadings. Havert and Tabb filed objections to Bruce's proposed order and judgment. The probate court entered its order granting the motion for judgment on the pleadings and judgment on the pleadings on August 18, 2017. The probate court approved the orders as submitted on August 18, 2017, and signed the proposed judgment that day. A minute order dated August 21, 2017, reflected that the court had issued its ruling. The court ordered the clerk to give notice. On August 22, 2017, Bruce signed and filed with the court a notice of entry of order granting Bruce's motion for judgment on the pleadings.

Notice of Appeal Filed

On October 19, 2017, Havert and Tabb filed the notice of appeal in this case from the August 18, 2017 judgment. As authority for the appeal, they listed the following Probate Code sections: section 1300, subdivision (b) [settling an account of a fiduciary], section 1300, subdivision (c) [approving or confirming the acts of a fiduciary]; section 1303, subdivision (c) [setting aside a small estate]; section 1303, subdivision (f) [determining the persons to whom distribution should be made]; and section 1304, subdivision (a) [final order with respect to a trust].

On November 3, 2017, Havert and Tabb filed the case information statement for their appeal from the August 18, 2017 judgment. They attached the June 30, 2017 order granting the motion for judgment on the pleadings, the August 18, 2007 judgment on the pleadings, and the August 21, 2017 minute order issuing the ruling and directing the clerk to give notice. They also attached the March 13, 2017 order denying Tabb's motion to compel further document production and ordering sanctions of \$5,160, the March 13, 2017 order denying Tabb's petition for a citation to show cause for contempt and remove Bruce as executor, and the October 7, 2016 order granting Bruce's motion to quash Tabb's deposition notice and ordering sanctions of \$5,630.

On November 13, 2017, Bruce filed a motion in this court to dismiss the appeal as to Tabb. He contends that the orders which Tabb had standing to appeal were filed no later than March 2017, and could not be appealed in connection with the judgment on the pleadings. On November 28, 2017, Havert and Tabb filed an opposition to the motion to dismiss on the ground that interim discovery orders are appealable from the probate court's July 7, 2017 order granting Bruce's petition to approve his report, waive an accounting, acknowledge satisfaction and discharge the executor. Since no written ruling had been entered on the July 7, 2017 order, Havert and Tabb requested that their appeal be deemed premature, rather than dismissing the appeal as to Tabb. In reply, Bruce asserted that Tabb was not a party to the July 7, 2017 order.

In December 2017, Havert and Tabb filed a proposed order in the probate court based on the minute order of July 7, 2017, that granted the petition for discharge of the executor, confirmed the acts of the executor, released him from liability, and terminated the probate proceedings. On December 20, 2017, the probate court signed and filed the order. The court ordered attorney Sullivan to give notice of the court's order.

On February 23, 2018, Havert and Tabb filed a request in this court to file an amended civil case information statement stating the date of entry of the order appealed from was August 18, 2017, and December 20, 2017, for the July 7, 2017 hearing.

Havert and Tabb filed a new notice of appeal on February 23, 2018, from a December 28, 2017 order. They listed the same Probate Code sections as authority for the appeal as the notice of appeal in this case, except omitted section 1303, subdivision (c) and instead listed section 1303, subdivision (g) [directing distribution of property].

DISCUSSION

Tabb's Appeal

Tabb appeals from interlocutory orders rendered against her in October 2016 and March 2017. We treat the notice of appeal as timely, but we conclude that Tabb does not have standing to pursue discovery in the probate matter.

A. Timeliness of Appeal

Bruce contends that Tabb’s appeal from the discovery orders was untimely. In the interests of justice, we deem Tabb’s premature appeal as having been filed directly after the December 20, 2017 order granting the petition for discharge of the executor and terminating the probate proceedings.

Discovery orders are reviewable on appeal from the final judgment. (*Carlson v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 431, 435–436; *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628.) Probate Code section 1300 enumerates several appealable probate orders, including an order settling the account of a fiduciary, approving the acts of a fiduciary, directing payment of a claim, and discharging a fiduciary.

If an appealable order is entered in the minutes, but the minute order directs a party to prepare a written order, the date of entry is the date that the signed order is filed. (Cal. Rules of Court, rule 8.104(c)(2).) California Rules of Court, rule 8.104(d) provides, “(1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment. [¶] (2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.” Notices of appeal are to be

construed liberally in favor of sufficiency, and a notice of appeal from a nonappealable order “can be interpreted to apply to an existing appealable order or judgment, if no prejudice would accrue to the respondent.” (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20.)

In this case, the orders denying Tabb’s requests for discovery were appealable from the order settling the account and discharging the fiduciary. The probate court’s July 7, 2017 minute order directed Bruce to submit a formal written order. Havert and Tabb filed their notice of appeal on October 19, 2017. Their notice of appeal referred to the date of entry of judgment on the pleadings, but the notice relied on subdivisions of Probate Code section 1300 that related to the July 7, 2017 order. The civil case information statement filed a few weeks later included copies of the orders against Tabb that denied discovery. Bruce had notice of Tabb’s intent to appeal the discovery rulings before the written order discharging the executor was entered. The probate court subsequently executed the written order on December 20, 2017, which incorporated the rulings announced in the July 7, 2017 minute order.

In the interest of justice, we deem Tabb’s appeal as having been filed immediately after entry of the orders settling the account and discharging the executor. Bruce’s motion to dismiss Tabb’s appeal is denied. Tabb’s request to file an amended civil case information statement, however,

which Tabb filed with this court on March 13, 2018, is denied.

B. Standing

Bruce contends that the discovery orders were properly denied, because Tabb does not have standing to pursue discovery in this probate matter. We agree.

“Management of discovery lies within the sound discretion of the trial court, and, therefore, a discovery order is reviewed under the abuse of discretion standard.” (*Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 330.) “A lack of standing is a jurisdictional defect to an action that mandates dismissal. [Citations.]” (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501.) “Lack of standing may be raised at any time in the proceeding, including at trial or in an appeal. [Citations.]” (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000 (*Blumhorst*)). “A litigant’s standing to sue is a threshold issue to be resolved before the matter can be reached on the merits. [Citation.] ‘If we were to conclude that plaintiff did not have standing to maintain the action, not having been personally damaged by the defendants’ conduct, then there would be no need to address the merits of her cause. Equally wasteful of judicial resources would be a resolution on the merits without reaching the standing issue.’ [Citation.] We will not address the merits of litigation when the plaintiff lacks standing, because

“California courts have no power . . . to render advisory opinions or give declaratory relief.”” [Citation.] Standing “goes to the existence of a cause of action.” [Citation.]’ [Citation.]” (*Ibid.*)

Probate Code section 48, subdivision (a) provides that, “Subject to subdivision (b), ‘interested person’ includes any of the following: [¶] (1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. [¶] (2) Any person having priority for appointment as personal representative. [¶] (3) A fiduciary representing an interested person.” Probate Code section 48, subdivision (b) explains, “The meaning of ‘interested person’ as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.”

Probate Code section 6402 provides for intestate succession in relevant part: “Except as provided in Section 6402.5, the part of the intestate estate not passing to the surviving spouse, under Section 6401, or the entire intestate estate if there is no surviving spouse, passes as follows: [¶] (a) To the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240. [¶] (b) If there is no surviving issue, to the decedent’s parent or parents equally. [¶] (c) If there is no surviving issue or

parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.”

In this case, Tabb is not a beneficiary of the will that was admitted to probate. She also has no claim to a share of the estate through intestate succession. If Donald’s gift to his trust were found to be invalid, the remainder would pass by intestate succession to his surviving child, Havert. In the event that Havert were not eligible, Tabb’s father Robert could have been entitled to a share through intestate succession as a surviving sibling at the time of Donald’s death. Robert died following his brother’s death, and Robert’s will established a testamentary trust. Any share of Donald’s estate that Robert had a claim to receive as a surviving sibling would pass through Robert’s will to his trust. Tabb is not the executor of Robert’s estate or the trustee of his trust. Robert’s wife is the personal administrator of his will, and the trustee and primary beneficiary of his testamentary trust. Tabb is a future remainder beneficiary of her father’s trust. The probate court properly found that Tabb is not an interested person with respect to the probate proceedings and had no standing to pursue further discovery.

Existence of November 15, 2010 Trust

Elizabeth contends that the trial court erred by granting judgment on the pleadings, because the existence of the November 15, 2010 trust has not been determined in any proceeding.

A. Standard of Review

“The standard of review for a judgment on the pleadings is the same as for a demurrer. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 (*Schabarum*).) All allegations in the complaint and matters upon which judicial notice may be taken are assumed to be true. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746.)” (*Rippon v. Bowen* (2008) 160 Cal.App.4th 1308, 1312–1313.)

B. Timeliness of Petition

Bruce contends that Havert’s petition is an untimely will contest. This is incorrect.

Under Probate Code section 11700, “At any time after letters are first issued to a general personal representative and before an order for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of

the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim."

Havert's petition for a determination of distribution of a share of the estate is expressly authorized under Probate Code section 11700. A party may file a will contest and a petition for distribution of a share of the estate. (See *Estate of Katleman* (1993) 13 Cal.App.4th 51, 66–67 [pretermitted spouse, who brought an unsuccessful will contest on the grounds of undue influence and fraud, subsequently petitioned for distribution of a share of estate].) Bruce has not provided any citation to authority for the proposition that when a will contest is filed, all parties claiming entitlement to distribution of a share of the estate must intervene and litigate their interests in the will contest, rather than filing a petition under Probate Code section 11700. Havert's petition was timely.

C. Law of the Case

Havert contends the existence of a November 15, 2010 trust has not been adjudicated. This is correct.

Unlike the doctrines of issue and claim preclusion, which arise after entry of final judgment in one lawsuit and commencement of another, the doctrine of law of the case operates within the proceedings in a single lawsuit. "Under the law of the case doctrine, when an appellate court "states in its opinion a principle or rule of law necessary to the

decision, that principle or rule becomes the law of the case and must be adhered to throughout [the case's] subsequent progress, both in the lower court and upon subsequent appeal” [Citation.] Absent an applicable exception, the doctrine “requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.” [Citation.] As its name suggests, the doctrine applies only to an appellate court’s decision on a question of law; it does not apply to questions of fact.’ [Citation.]” (*Investors Equity Life Holding Co. v. Schmidt* (2015) 233 Cal.App.4th 1363, 1377.)

The law of the case doctrine may apply even where the appeal is from a decision “short of a full trial, including a judgment on a demurrer, a nonsuit order or [other] motion.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 356.) “Like *res judicata*, the doctrine of the law of the case serves to promote finality of litigation by preventing a party from relitigating questions previously decided by a reviewing court.” (*George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd.* (1989) 49 Cal.3d 1279, 1291.) “From a policy standpoint it is not difficult to envisage the frustrating consequences that could flow from a practice allowing different panels of the Court of Appeal to redetermine issues which were disposed of on a previous appeal in the same case.” (*People v. Shuey* (1975) 13 Cal.3d 835, 840 (*Shuey*), overruled on another ground as recognized by *People v. Bennett* (1998) 17 Cal.4th 373, 389, fn. 5.)

There are three requirements for the doctrine to apply. (See *Shuey, supra*, 13 Cal.3d at p. 842.) First, the point of law involved must have been necessary to the prior decision. Second, the matter must have been actually presented and determined by the court. And third, application of the doctrine will not result in an unjust decision. (*Ibid.*)

No court in this case has determined the existence of the November 15, 2010 trust. In seeking to admit the November 15, 2010 will to probate and to avoid production of the November 15, 2010 trust, Bruce expressly argued that the validity of the trust was not at issue. On appeal from the will contest, the appellate court concluded that it was not necessary to determine whether the trial court abused its discretion by refusing to order production of the November 15, 2010 trust. Any error was not prejudicial, because there was substantial evidence to support the probate court's findings of capacity and no undue influence without consideration of the November 15, 2010 trust. The existence of the November 15, 2010 trust has never been presented to or determined by any court. The judgment and the order granting judgment on the pleadings must be reversed.

DISPOSITION

The appeal of Tabb is dismissed for lack of standing. The August 18, 2017 judgment against Havert and the order granting judgment on the pleadings against her are reversed. The probate court is directed to enter a new and different order denying the motion for judgment on the pleadings with respect to Havert. In the interests of justice, the parties are to bear their own costs on appeal.

MOOR, Acting P.J.

We concur:

KIM, J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.